

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Thomas Treshawn Ivey,

Plaintiff,

vs.

State of South Carolina a Governmental
Entity; Jon Ozmint, Director of South
Carolina Department of Corrections;
Bernard McKie, Warden, Kirkland
Correctional Institution, Columbia South
Carolina; and Unknown Executioners,
individually and in Their official capacities,

Defendants.

C/A No. 0:07-4025-GRA-BM

REPORT AND RECOMMENDATION

This action has been filed by the Plaintiff, an inmate with the South Carolina Department of Corrections on Death Row, seeking, inter alia, a permanent injunction prohibiting his execution by lethal injection under the current standards and practices of South Carolina. While Plaintiff has a separate habeas action pending; see Ivey v. Ozmint, C/A No. 0:07-4024; this action has been filed pursuant to 42 U.S.C. § 1983. See Hill v. McDonough, 126 S.Ct. 2096 (2006) [appropriate vehicle for prisoner to challenge proposed procedure used in administering death penalty is § 1983].

The Defendant State of South Carolina has filed a motion to dismiss based on Eleventh Amendment immunity. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984); Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989). Since the Director of the South Carolina Department of Corrections, Jon Ozmint, is a party in this case and is being sued in both his individual and official capacity, and because any execution of the Plaintiff will be conducted under



his direct supervision and control, Plaintiff does not object to the dismissal of the State of South Carolina as a party Defendant.

Conclusion

Based on the foregoing, it is recommended that the Defendant State of South Carolina's motion to dismiss be **granted**, and that the State be **dismissed** as a party Defendant in this case.



Bristow Marchant
United States Magistrate Judge

Columbia, South Carolina

April 1, 2008